NATIONAL PARK SERVICE
(STUART G. RAMSTAD)

IBLA 90-36 Decided March 29, 1993

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing protest and approving trade and manufacturing site purchase application AA-24793 under principles of equitable adjudication.

Affirmed.

1. Administrative Procedure: Judicial Review--Alaska: Trade and Manufacturing Sites--Equitable Adjudication: Generally

   When a United States Court of Appeals has held that a claimant is entitled to equitable adjudication of his untimely application to purchase a trade and manufacturing site and the National Park Service has neither submitted any evidence contradicting the facts underpinning that holding nor demonstrated that the claimant's failure to timely comply with the law indicated bad faith, BLM properly considers the purchase application on the merits under the principles of equitable adjudication.

2. Alaska: Trade and Manufacturing Sites--Equitable Adjudication: Generally

   Although sec. 1870.33B of the BLM Manual requires BLM to contact the agency that has jurisdiction over the claimed land and request its concurrence in the allowance of an application, the refusal of the holding agency to concur in the allowance of the application does not preclude BLM from approving the application under its equitable adjudication authority.

3. Administrative Procedure: Burden of Proof--Alaska: Trade and Manufacturing Sites--Equitable Adjudication: Generally

   A party appealing from a BLM decision has the burden of establishing error in the decision under appeal, and conclusory allegations of error, standing alone, do not discharge this burden.

APPEARANCES: F. Christopher Bockmon, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the National Park Service; Stephen M. Ellis, Esq., Anchorage, Alaska, for Stuart G. Ramstad.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The National Park Service (NPS) has appealed from an August 22, 1989, decision of the Alaska State Office, Bureau of Land Management (BLM), dismissing NPS' protest and approving Stuart G. Ramstad's trade and manufacturing (T & M) site purchase application AA-24793 under the principles of equitable adjudication. Ramstad's accepted T & M site embraces 40 acres located in the W½ SW¼ sec. 27 and the SE¼ sec. 28, T. 5 N., R. 29 W.,
Seward Meridian, Alaska, within the boundaries of Lake Clark National Park and Preserve. 1/

A brief history of Ramstad's early attempts to obtain his T & M
site will aid in understanding the issues raised by this appeal. 2/ On December 25, 1962, Ramstad staked an 80-acre parcel of public land in
the W½ SW¼ sec. 27 and the SE¼ sec. 28, T. 5 N., R. 29 W., Seward Meridian, as a T & M site pursuant to section 10 of the Act of May 14, 1898,
as amended, 43 U.S.C. § 687a (1988) (repealed by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2789, effective October 21, 1986, subject to valid existing rights), which allowed the purchase of up to 80 acres of public land upon proof that the land contained the claimant's improvements and was "needed in the prosecution of such trade, manufacture, or other productive industry." Ramstad operated a hunting and fishing lodge and guide service on the site and over time made improvements on the site, including several cabins and
other buildings, valued at over $200,000.

On April 15, 1967, Ramstad endeavored to file a notice of location, pursuant to section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1988) (repealed by section 703(a) of FLPMA, P.L. 94-579, 90 Stat. 2789, effective October 21, 1986), and 43 CFR 2562.1, which provide, inter alia, that a T & M site claimant must file a notice of location within 90 days

1/ Congress created Lake Clark National Park and Preserve on Dec. 2, 1980, by section 201(7) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 410hh(7) (1988). The lands included in the Park were withdrawn from all forms of appropriation under the public land laws, subject to valid existing rights. 16 U.S.C. § 410hh-5 (1988).
2/ These facts are gleaned from the opinion of the Court of Appeals in Ramstad v. Hodel, 756 F.2d 1379, 1380-81 (9th Cir. 1985). The court found that these facts were not in material dispute for purposes of the appeal since the Government, given its motion for summary judgment, had accepted as true the allegations of Ramstad's complaint. 756 F.2d at 1380. Nothing in the record before us controverts any of the facts recited by the court, and we adopt them as well.

from the date of initiation of the claim or no credit will be given for occupancy maintained on the claim prior to the filing of the location notice or an application to purchase, whichever is earlier. BLM did not accept Ramstad's location notice because the desired land had been classified for multiple use (32 FR 14971 (Oct. 27, 1967)) and withdrawn, subject to valid existing rights, from all forms of public appropriation on March 8, 1967 (see 32 FR 3838), 38 days before Ramstad's attempt to file his notice.

In December 1968, BLM notified Ramstad that he should cease use of the site and remove all his improvements, but, after meeting with Ramstad about his use of the site prior to the withdrawal, BLM vacated its notice and requested that Ramstad submit evidence to document his commercial use of the site before the March 8, 1967, withdrawal. In January 1969, Ramstad visited BLM and was again told that he would not be allowed to file his T & M location notice because of the withdrawal. However, by letter dated February 24, 1969, BLM referred to its earlier agreement to vacate its December 1968 removal notice, stated that it still had not received the information supporting Ramstad's commercial use of the site prior to the withdrawal, and gave Ramstad 30 days to furnish that evidence or face legal action. Ramstad visited the BLM office several times after receiving this letter, was again informed that his location notice would not be accepted for filing, and did not provide the requested data.

After BLM served Ramstad with a notice of trespass on September 23, 1974, Ramstad made several more visits to the BLM office. In early 1979, BLM personnel advised Ramstad to submit an application to purchase the T & M site and to request equitable adjudication of his claim.

On March 1, 1979, Ramstad filed an application to purchase his 80-acre T & M site and a request for equitable adjudication under 43 CFR 1871.1. Ramstad, a registered guide, claimed occupancy and use of the 80-acre tract as a hunting and fishing lodge since December 25, 1962, and estimated that the value of the improvements he had made on the site exceeded $200,000. Ramstad provided maps, photographs, advertisements, letters from guests, and other documentation evidencing his commercial use of the site.

Ramstad asserted that he was entitled to equitable adjudication of his T & M site purchase application because he had substantially complied with the law although full compliance had not been timely made. He contended that his failure to timely comply with the T & M laws was due to administrative errors on the part of BLM staff in Anchorage, Alaska, when they refused to accept his notice of location submitted near the time the land was withdrawn.

By decision dated May 14, 1980, BLM rejected Ramstad's application to purchase and denied his request for equitable adjudication. BLM found that Ramstad's failure to file his application within 90 days of the initiation of his occupancy in December 1962 precluded recognition of credit for occupancy of the site before March 1, 1979. BLM noted that when Ramstad filed his application on March 1, 1979, the land sought was not vacant, unappropriated public land subject to settlement or location because it had been withdrawn by the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C.

§ 1610 (1988), and included in a selection application filed by Cook Inlet Region, Inc. pursuant to 43 U.S.C. § 1611 (1988). BLM concluded that since Ramstad had failed to establish that his claim constituted a valid existing right prior to the ANCSA withdrawal, the claim was invalid. BLM also denied Ramstad's request for equitable adjudication on the ground that he had failed to show substantial compliance with the law.

Ramstad appealed and the Board affirmed BLM's decision. Stuart Grant Ramstad, 55 IBLA 223 (1981). The Board determined that Ramstad had not acquired a valid existing right excepted from the withdrawal because, in accordance with the provisions of 43 U.S.C. § 687a-1 (1988) and 43 CFR 2562.1, the failure to comply with the 90-day filing requirement operated to preclude credit for occupancy of the claim prior the filing of his purchase application on March 1, 1979, and the land was unavailable for entry on that date. The Board further indicated that, when Ramstad attempted to file his location notice in April 1967, the fact that the land had been withdrawn from appropriation in March 1967 similarly thwarted his entry at that time. The Board also concluded that Ramstad had not substantially complied with the law and was, therefore, not entitled to equitable adjudication of his claim.

The Board denied Ramstad's petition for reconsideration of the decision by order dated September 30, 1981, and Ramstad sought review of the Board's decision in Federal court.

On April 2, 1985, the Ninth Circuit Court of Appeals issued its decision in Ramstad v. Hodel, 756 F.2d 1379 (9th Cir. 1985), upholding the Board's determination that Ramstad had not fully complied with 43 U.S.C. § 687a-1 (1988), and thus was not entitled, as a matter of law, to purchase his T & M site, but reversing the Board's conclusion that Ramstad had not substantially complied with the law and, therefore, was ineligible for equitable adjudication of his claim. After noting that no question had been raised about Ramstad's good faith (756 F.2d at 1383), the court found that, based on equitable principles, it would be permissible to allow Ramstad to waive the early period of his occupancy and be deemed to have initiated his claim 90 days prior to April 15, 1967, the date he attempted to file his notice of location, thus avoiding the effects of the March 8, 1967, withdrawal. 756 F.2d at 1384, 1386. The court further concluded that equitable adjudication was not precluded by Ramstad's untimely filing of his application to purchase, noting that although 43 U.S.C. § 687a-1 (1988) requires the filing of a purchase application within 5 years of the filing of a location notice, Ramstad could not be held to the 5-year requirement when his attempted filing of the location notice was refused by BLM and he was continually advised that the land was not available. 756 F.2d at 1386.

The court summarized its holding as follows:

> We merely hold that under the facts presented on this appeal, Ramstad is entitled to have his case equitably adjudicated by the Secretary or his delegate, under the principles of "equity and justice" specified by 43 U.S.C. § 1161 [(1988)], and in

light of that statutes's remedial purposes. We do not dictate
the outcome of that adjudication.

756 F.2d at 1387.

By order dated June 26, 1985, the Board vacated its decision and remanded the case to BLM for consideration of Ramstad's request for equitable adjudication.

BLM examined Ramstad's site for compliance with the T & M laws on August 25, 1985. In a report dated March 28, 1986, and concurred with on April 9, 1986, the examiner determined that, based on the field examination and all the evidence in the record, Ramstad had been operating a T & M site from 1963 to the present and that the area occupied by Ramstad's improvements encompassed 10 acres.

On June 15, 1987, Ramstad met with BLM personnel, informing them that he used more than the 10 acres described in the 1986 report and pointing out the locations of storage areas, parking areas, and other areas used by him on maps of the site. He acknowledged that he had accompanied the examiner but stated that he had not realized that he needed to show the examiner everything on the property.

As a result of this meeting, BLM again examined the site on August 5, 1987. Three representatives from Lake Clark National Park and Preserve, as well as Ramstad, attended at least part of the supplemental field examination. In an October 16, 1987, field report, the examiner concluded that Ramstad possessed and occupied a total of 50 acres as part of his T & M site. The additional acreage included land necessary to access a floating dock, launching and storage areas for snowmachines, and storage areas for miscellaneous building supplies and old parts which would be unsightly if left in view.

Because Ramstad's site was located within Lake Clark National Park and Preserve, by memorandum dated September 13, 1988, BLM requested NPS' concurrence in the allowance of the purchase application. NPS responded on October 6, 1988, stating that "[a]t this time we do not concur with the conveyance of the 50-acre parcel as described in the amended field report" (Oct. 6, 1988, Memorandum at 1 (emphasis in original)). NPS asserted that it doubted that Ramstad qualified for equitable adjudication because his failure to file a timely application was not the result of ignorance, mistake, circumstances beyond his control, or any other sufficient reason, but rather was the result of willful neglect. Even if equitable adjudication were appropriate, NPS suggested that conveyance of the parcel was not the only permissible outcome of such adjudication since a lifetime lease might be considered equitable, and stated that it would not concur with a conveyance until the equitable adjudication process was complete. Furthermore, if Ramstad's claim were accepted, NPS insisted that it be limited to the 10 acres recommended in the original 1986 field report since there was no evidence supporting Ramstad's use of the additional acreage at the time he filed his purchase application.

On November 14, 1988, Ramstad, his attorney, BLM, and NPS representatives met to discuss Ramstad's claim. As a result, by memorandum dated November 16, 1988, the Anchorage District Manager recommended conveyance to Ramstad of a 40-acre parcel of land falling within the boundaries of Ramstad's original purchase application, noting that Ramstad had agreed that acceptance of the parcel would constitute full and complete satisfaction of his T & M site claim.

By memorandum dated November 28, 1988, NPS protested the proposed conveyance of 40 acres to Ramstad. NPS contended that the original 10-acre recommendation in the 1986 field report correctly described Ramstad's entitlement since it was based on his use prior to April 15, 1972, the date the purchase application would have to have been filed if BLM had accepted Ramstad's location notice on April 15, 1967. NPS asserted that the additional acreage was based on use beginning after April 15, 1972, and that there was insufficient evidence to support a finding that Ramstad used or required more than 10 acres as of April 15, 1972. NPS urged that it would be unfair to the public interest in preserving the claimed land as part of the National Park System to allow equitable adjudication to place Ramstad in a better position than he would have been in if he had timely filed his location notice, followed within 5 years by a purchase application. Accordingly, NPS objected to the proposed conveyance of additional acreage not used in a qualifying manner before April 15, 1972. 3/

By decision dated August 22, 1989, the Alaska State Office, BLM, dismissed NPS' protest and, under the principles of equitable adjudication, approved Ramstad's purchase of the 40-acre parcel recommended by the Anchorage District Manager. BLM accepted Ramstad's waiver of any entitlement to the balance of the acreage for which he had applied, thus extinguishing Ramstad's claim to the remaining acreage.

In its statement of reasons (SOR) for appeal, NPS argues that Ramstad has not established that he is qualified for equitable adjudication because he has failed to demonstrate that his failure to timely comply with the law arose from ignorance, accident, or mistake which is satisfactorily explained. NPS also asserts that BLM erred by not obtaining NPS' concurrence in the allowance of Ramstad's application, noting that section 1870.33B of the BLM Manual requires BLM, when processing equitable adjudication cases, to request the concurrence of the holding agency if the subject land is under the jurisdiction of an agency other

3/ On Jan. 30, 1989, the Director, Alaska State Office, BLM, requested that the Secretary take jurisdiction to resolve this dispute between BLM and NPS. Both Ramstad and NPS commented on this request; Ramstad's Feb. 10, 1989, letter to the Secretary stated his agreement to waive his entitlement to any additional acreage in exchange for the 40 acres recommended by the District Manager. On July 20, 1989, the Director, BLM, concluded that the Alaska State Office should resolve Ramstad's claim in the first instance, and returned the case to that office.

than BLM. NPS contends that BLM should be directed to again seek NPS concurrence and that, absent such concurrence, BLM may not proceed with processing Ramstad's application.

NPS indicates that it "stands by its concurrence for conveyance of ten acres assuming the other impediments surrounding equitable adjudication can be overcome" (SOR at 6). According to NPS, Ramstad has not established his entitlement to more than the 10 acres recommended in the 1986 field report because he has not shown that he used or needed the additional acreage as of April 15, 1972. NPS contends that the 1987 field report prepared after the second field examination incorrectly concluded that because Ramstad currently used the additional land, those lands were possessed and occupied as required by 43 CFR 2562.0-3, emphasizing that the key is whether those lands were used and needed on April 15, 1972, not whether they are used now. Comparing the map attached to the second field report with the attachments to Ramstad's March 1, 1979, application, NPS urges, demonstrates that the additional land was neither needed nor used during the relevant time. Therefore, NPS argues, if Ramstad is entitled to purchase a T & M site, such site should embrace no more than 10 acres. 4/

In his answer, Ramstad contends that BLM properly found that his T & M site should be conveyed to him under principles of equitable adjudication, pointing out that the court in Ramstad v. Hodel, 756 F.2d at 1387, specifically held that Ramstad was entitled to have his case equitably adjudicated. Ramstad argues that he has met both of the criteria for equitable adjudication: he has substantially complied with the law and his good faith has

4/ NPS also argues that BLM's decision dismissing its protest must be reversed because "[t]here is nothing in the record to show that the concerns expressed by the Park Service were addressed or any rationale for their rejection" (SOR at 8). This Board has stated numerous times that it is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision and demonstrated in the record. See, e.g., Union Oil Company of California, 116 IBLA 8, 16 (1990); Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 368 (1990); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). The recipient of a BLM decision must be given a reasoned and factual explanation of the justification for the decision and some basis for understanding and accepting it or, alternatively, for appealing and disputing it before the Board. Union Oil Company of California, supra; Eddleman Community Property Trust, supra; Southern Union Exploration Co., 51 IBLA 89, 92 (1980) (and cases cited therein). In this case, although the BLM decision contains no explanation for its dismissal of the NPS protest, the record not only contains sufficient information supporting BLM's determination, but also indicates that NPS actively participated in BLM's consideration of Ramstad's claim. That NPS clearly had a basis for understanding the decision and challenging it on appeal is evidenced by the arguments made in its SOR. Since NPS has not demonstrated that it was harmed by inadequate information, we decline to reverse BLM's decision on this basis. See Union Oil Company of California, supra at 16-17.

never been questioned, thus demonstrating that the reason for his error does not indicate bad faith.

Ramstad also asserts that NPS was afforded the requisite opportunity to concur, noting that BLM sought NPS concurrence and that after NPS declined to concur, NPS continued to participate in lengthy discussions about the claim. Ramstad challenges NPS' conclusion that BLM may not proceed absent NPS concurrence, asserting that the BLM Manual does not require NPS concurrence, but simply mandates that NPS be afforded the opportunity to make its views known. In light of NPS' obvious conflict of interest, Ramstad argues that NPS should not be granted an absolute veto over BLM decisions, and insists that the ultimate decision on a request for equitable adjudication belongs to BLM not NPS.

Ramstad further argues that he used and needed at least 40 acres for his T & M site prior to April 15, 1972. He disputes NPS' contention that the additional use found in the second examination did not begin until
after the first examination, explaining that he failed to identify these areas during the first examination because he did not understand the significance of the examination. Ramstad attaches an affidavit, dated July 27, 1990, in which he states that he has used the entire 40 acres
since at least April 15, 1972, and that prior to that time, he engaged in all the uses described in the second field report, i.e., placing a floating dock in a bight sheltered from the east winds at a point approximately a quarter mile from the lodge, utilizing an area between the dock and the lodge to drive snowmachines onto the ice in the winter, and using an extensive area north and east of the lodge to store miscellaneous building supplies and old parts that would be unsightly if stored in view of the lodge and cabins. Accordingly, Ramstad concludes that BLM's decision must be affirmed.

[1] The Department's equitable adjudication authority derives from 43 U.S.C. § 1161 (1988), which provides:

> The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity
> and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patent shall issue upon the same.

43 U.S.C. § 1164 (1988) extends this authority to

> all cases of suspended entries and locations, which have arisen in the Bureau of Land Management since the 26th day of June, 1856, as well as to all cases of a similar kind which may hereafter occur, embracing as well locations under bounty-land warrants as ordinary entries or sales, including homestead entries and preemption locations or cases; where the law has been substantially complied with, and the error or informality arose from ignorance,

accident, or mistake which is satisfactorily explained; and where the rights of no other claimant or preemptor are prejudiced, or where there is no adverse claim.

The Departmental regulation implementing this statutory authority, 43 CFR 1871.1-1, reads as follows:

> The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:
>
> (a) Substantial compliance: All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district, in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith[,] there being no lawful adverse claim.

The rules permitting equitable adjudication apply to T & M claims. See Elizabeth Hickethier, 6 IBLA 306, 308-309 (1972); C. Rick Houston, 5 IBLA 71, 75 (1972).

Authority for the purchase of a T & M site is found at 43 U.S.C. § 687a (1988). That statute provides, in part:

> Any citizen * * * in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at $2.50 per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry.

Additionally, 43 U.S.C. § 687a-1 (1988) states that all persons initiating a claim subject to 43 U.S.C. § 687a (1988) must file a notice describing the claim within 90 days of the date of the initiation of the claim and provides that if such a notice is not timely filed, the claimant will not be given credit for any occupancy of the claim prior to the filing of the required location notice or an application to purchase the site, whichever occurs earlier. That provision further declares that an application to purchase a claim and the required proof must be filed within 5 years after filing the notice of location.

The court in Ramstad v. Hodel, supra, based on the identical facts before us (see n.2, supra), held that Ramstad was "entitled to have his case equitably adjudicated by the Secretary or his delegate, under principles of 'equity and justice' specified by 43 U.S.C. § 1161, and in light of that statute's remedial purposes." 756 F.2d at 1387. NPS has offered no evidence undercutting the factual predicates for the court's conclusions, nor has it demonstrated that the reasons for Ramstad's failure to timely comply with the law indicated bad faith. See Donna J. Waidtlow, 82 IBLA 247, 252 (1984) (remanding case for equitable adjudication even though failure to timely remit payment was not satisfactorily explained where no bad faith, intervening interest, or inconvenience to BLM was apparent from the record); see also Larry L. Lowenstein, 57 IBLA 95, 102 (1981) (appellant's good faith warranted consideration of entry under principles of equitable adjudication). Accordingly, we find that BLM properly determined that Ramstad was entitled to have his application to purchase a T & M site considered on the merits under BLM's equitable adjudication authority. See Elizabeth Hickethier, supra.

[2] NPS argues that, absent its concurrence in the allowance of Ramstad's application, BLM may not approve Ramstad's purchase of a 40-acre T & M site. We disagree.

Section 1870.33B of the BLM Manual states that, "[i]f the application is allowable and the land is under the administrative jurisdiction of another agency, the Deputy State Director, if all else is regular, will contact the holding agency requesting its concurrence in the allowance of the application." BLM followed the Manual as it was obligated to do (see, e.g., Beard Oil Co., 105 IBLA 285, 288 (1988)) and contacted NPS, seeking its concurrence in allowing Ramstad to purchase the 40-acre T & M site. NPS specifically declined to concur in the allowance of the entire 40 acres, although it did agree that 10 acres might be acceptable if Ramstad was otherwise qualified for equitable adjudication.

The statutory provisions authorizing equitable adjudication, 43 U.S.C. §§ 1161, 1164 (1988), and the regulation implementing those provisions, 43 CFR 1871.1-1, do not require the concurrence of the holding agency before the Director, BLM, may approve an application under the principles of equitable adjudication. Nor does section 1870.33B of the BLM Manual mandate that such concurrence be secured; it simply compels BLM to notify the holding agency and seek its agreement, but is silent as to the effect of a holding agency's refusal to concur. The ultimate authority to determine whether a case is subject to equitable adjudication rests with the Director, BLM. See 43 CFR 1871.1-1. Accordingly, we find NPS' refusal to concur in the allowance of the 40-acre site does not preclude BLM from conveying a 40-acre T & M site to Ramstad. 5/

5/ We note that NPS' jurisdiction over the land embraced in the T & M site did not begin until Lake Clark National Park and Preserve was created in 1980, long after Ramstad started occupying and improving his site, and the withdrawal of the land embraced by the Park was made subject to valid existing rights. 16 U.S.C. § 410hh-5 (1988).

[3] NPS also contends that Ramstad has not demonstrated that he used and needed the entire 40 acres for his T & M site as of April 15, 1972, asserting that the 10-acre parcel recommended in the first field report adequately embraces all of Ramstad's improvements. NPS alleges that the qualifying uses discussed in the second field report all began after the critical time period. In response, Ramstad states that all the uses described in the second field report began before April 15, 1972.

Under 43 U.S.C. § 687a-1 (1988), the statutory life of a T & M site claim is 5 years from the filing of the notice of the claim. See, e.g., United States v. Hodge, 111 IBLA 77, 80 n.4 (1989); Bythel J. Compton, 18 IBLA 148, 151 (1974). Ramstad's location notice was deemed to have been filed at the time of his attempted filing on April 15, 1967. Ramstad v. Hodel, 756 F.2d at 1386. Thus, Ramstad's needs and improvements as of April 15, 1972, 5 years after that "filing," limit the extent of his claim. See United States v. Hodge, supra at 81.

BLM concluded that Ramstad was entitled to a 40-acre T & M site. NPS, as the appealing party, has the burden of establishing error in that decision. Shama Minerals, 119 IBLA 152, 155 (1991). Although NPS disputes BLM's conclusion, it offers no convincing evidence or documentation showing error in BLM's decision or contradicting Ramstad's statement that he used and needed the entire 40 acres prior to April 15, 1972. As this Board has stated numerous times, conclusory allegations of error, standing alone, are insufficient to establish that a BLM decision is erroneous. See, e.g., Glanville Farms, Inc. v. BLM, 122 IBLA 77, 85 (1992); Shama Minerals, supra; Animal Protection Institute of America, 118 IBLA 63, 66 (1991); United States v. De Fisher, 92 IBLA 226, 227 (1986). We, therefore, reject NPS' challenge to BLM's decision to convey 40 acres to Ramstad as a T & M site.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

James L. Burski
Administrative Judge